

STATE OF ARIZONA
40th LEGISLATURE
SECOND REGULAR SESSION

REFERENCE TITLE: solid waste program
amendments

HOUSE

HB 2060

Introduced
January 27, 1992

Referred on January 27, 1992

Rules

Environment

Natural Resources & Agriculture

815 N. HAYDEN RD. #B-16
SCOTTSDALE, AZ 85257-4405
BILL WILCOX

Introduced by

Representatives Grace, Mundell: Cummiskey, Eden, Jewett, Johnson, Smith

AN ACT

AMENDING SECTIONS 49-701, 49-761 AND 49-762, ARIZONA REVISED STATUTES;
AMENDING TITLE 49, CHAPTER 4, ARTICLE 4, ARIZONA REVISED STATUTES, BY
ADDING SECTIONS 49-770, 49-771 AND 49-772; REPEALING LAWS 1991, CHAPTER
315, SECTION 37; RELATING TO SOLID WASTE.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 49-701, Arizona Revised Statutes, is amended to
read:

49-701. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the solid waste management advisory board.

2. "County" means:

(a) The board of supervisors in the context of the exercise of
powers or duties.

(b) The unincorporated areas in the context of area of
jurisdiction.

3. "Facility plan" means any design or operating plan for a solid
waste facility or group of solid waste facilities.

4. "Inert material" means material that is biologically inert or is
insoluble in water and will not decompose or leach substances to water,
including uncontaminated broken concrete, brick, rock, gravel, sand and
soil.

5. "Management agency" means any person responsible for the day to
day operation, maintenance and management of a particular public facility
or group of public facilities.

6. "Medical waste" means any solid waste which is generated in the
diagnosis, treatment or immunization of a human being or animal or in any
research relating to that diagnosis, treatment or immunization, or in the
production or testing of biologicals, but not including hazardous waste as
defined in section 49-921.

1 7. "Person" means any public or private corporation, company,
2 partnership, firm, association or society of persons, the federal
3 government and any of its departments or agencies, this state or any of
4 its agencies, departments, political subdivisions, counties, towns or
5 municipal corporations, as well as a natural person.

6 8. "Public facility" means any site owned and operated or utilized
7 by any person and open to the general public for resource conservation or
8 recovery or for the collection, source separation, storage,
9 transportation, transfer, processing, treatment or disposal of solid
10 waste. Public facility includes a public solid waste landfill.

11 9. "Resource recovery" means the recovery of energy or materials
12 from solid waste.

13 10. "Salvaging" means the removal of solid waste from a public
14 facility with the permission and in accordance with rules or ordinances of
15 the management agency for purposes of productive reuse.

16 11. "Scavenging" means the unauthorized removal of solid waste from
17 a public facility.

18 12. "Solid waste" means any garbage, trash, rubbish, refuse, sludge
19 from a waste treatment plant, water supply treatment plant or pollution
20 control facility and other discarded material, including solid, liquid,
21 semisolid or contained gaseous material but not including domestic sewage
22 or hazardous wastes.

23 13. "Solid waste facility" means any site owned, operated or
24 utilized by any person for ~~resource conservation or recovery or for the~~
25 collection, source separation, storage, transportation, transfer,
26 processing, treatment or disposal of solid waste BUT DOES NOT INCLUDE
27 EITHER OF THE FOLLOWING:

28 (a) A SITE AT WHICH SOLID WASTE THAT WAS GENERATED ON SITE IS
29 STORED IN CONTAINERS OR TANKS FOR NINETY DAYS OR LESS.

30 (b) A TRANSFER FACILITY.

31 14. "Solid waste landfill" means a facility at which solid waste is
32 placed in or on land for the purpose of long-term storage or disposal.
33 Solid waste landfill does not include a land application unit, surface
34 impoundment, injection well, area containing ash from the combustion of
35 coal, compost pile or agricultural on-site disposal area covered under
36 section 49-766.

37 15. "Solid waste management" means the systematic administration of
38 activities which provide for the collection, source separation, storage,
39 transportation, transfer, processing, treatment or disposal of solid waste
40 in a manner that protects public health and safety and the environment and
41 prevents and abates public nuisances.

42 16. "Solid waste management plan" means the plan which is adopted
43 pursuant to section 49-721 and which provides guidelines for the
44 collection, source separation, storage, transportation, processing,
45 treatment, reclamation and disposal of solid waste in a manner that
46 protects public health and safety and the environment and prevents and
47 abates public nuisances.

1 17. "TRANSFER FACILITY" MEANS A SITE THAT IS OWNED, OPERATED OR USED
2 BY ANY PERSON FOR THE REHANDLING OR STORAGE OF SOLID WASTE FOR THE PURPOSE
3 OF TRANSPORTING THAT SOLID WASTE. TRANSFER FACILITY DOES NOT INCLUDE
4 EITHER OF THE FOLLOWING:

5 (a) A FACILITY THAT IS LOCATED AT THE SITE OF GENERATION OR
6 DISPOSAL OF THAT SOLID WASTE.

7 (b) A FACILITY THAT STORES SOLID WASTE FOR MORE THAN NINETY DAYS
8 FROM THE DATE OF RECEIPT OR TREATMENT OF THE WASTE.

9 Sec. 2. Section 49-761, Arizona Revised Statutes, is amended to
10 read:

11 49-761. Department rules; standards for solid waste
12 management; variances; cease and desist order

13 A. The department shall:

14 1. Define and prescribe reasonably necessary rules regarding
15 storage, collection, transportation, disposal and reclamation of garbage,
16 trash, rubbish, manure and objectionable wastes. The rules shall
17 prescribe minimum standards for storing, collecting, transporting,
18 disposing and reclaiming the wastes and shall provide for inspecting
19 premises, containers, processes, equipment and vehicles, and for abating
20 as public nuisances any premises, containers, processes, equipment or
21 vehicles which do not comply with the minimum standards.

22 2. Adopt such rules, facility plans submittal guidelines, standards
23 and procedures regarding the collection, source separation, storage,
24 transportation, transfer, processing, treatment and disposal of solid
25 waste at solid waste facilities as are reasonably necessary to implement
26 this chapter, to protect public health and safety and the environment and
27 to prevent and abate public nuisances.

28 3. Adopt rules to define biohazardous medical waste and to regulate
29 biohazardous medical waste and medical sharps to include:

30 (a) A definition for biohazardous waste which includes wastes that
31 contain material which is likely to transmit etiologic agents which have
32 been shown to cause or contribute to increased human morbidity or
33 mortality of epidemiologic significance. The department of environmental
34 quality shall consult with the department of health services in making
35 this determination.

36 (b) Reasonably necessary rules regarding the storage, collection,
37 transportation, treatment and disposal of biohazardous waste and medical
38 sharps, beginning with the placement by the generator of the waste in
39 containers for the purpose of waste collection. In the case of
40 self-hauling of waste by the generator, all storage facilities under the
41 generator's control and all waste handling practices including storage,
42 treatment and transportation shall be in accordance with these rules.

43 (c) Consideration of the quantity of medical sharps being
44 generated.

45 4. Adopt rules for solid waste facilities that are not open to the
46 public. In the adoption of those rules, the department shall take into
47 account the specific nature of the waste streams at those facilities.

5. ADOPT RULES FOR TRANSFER FACILITIES AS NECESSARY TO PROTECT THE PUBLIC HEALTH AND SAFETY AND THE ENVIRONMENT AND TO PREVENT AND ABATE PUBLIC NUISANCES. THE RULES SHALL INCLUDE:

(a) NOTIFICATION AND BEST MANAGEMENT PRACTICES FOR FACILITIES THAT CONTAIN EIGHTY CUBIC YARDS OF SOLID WASTE OR LESS.

(b) NOTIFICATION, FACILITY PLAN APPROVAL, FINANCIAL ASSURANCE AND BEST MANAGEMENT PRACTICES FOR FACILITIES THAT CONTAIN MORE THAN EIGHTY CUBIC YARDS OF SOLID WASTE.

B. The department may:

1. Within ninety days of receipt of a written request for a variance from a solid waste facility owner or operator or management agency, grant a variance from solid waste management rules and standards if the department concludes that no violation of health standards will occur. The department may consider whether a public nuisance will result. If the request is denied, the department shall prepare and make available to the agency or facility owner or operator a written decision including relevant data and a technical analysis supporting the denial.

2. Issue an administrative cease and desist order against any person in violation of any rule adopted by the department as necessary to protect public health and safety and the environment and to prevent and abate public nuisances.

3. Adopt reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of nonbiohazardous medical waste beginning with the placement by the generator of the waste in containers for the purpose of waste collection. In the case of self-hauling of the waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules.

4. Adopt reasonably necessary rules regarding the tracking of biohazardous waste and medical sharps. Reasonable and necessary rules shall recognize the quantity of medical sharps generated.

C. Incinerators which dispose of medical waste shall comply with chapter 3 of this title, rules adopted pursuant to chapter 3 of this title and permits issued pursuant to chapter 3 of this title.

D. The department shall consult with the department of health services in adopting rules under subsection A, paragraph 3, subdivision (a).

Sec. 3. Section 49-762, Arizona Revised Statutes, is amended to read:

49-762. Solid waste facility plan approval; exemption

A. Until January 1, 1993, the department shall review and approve public facility plans which satisfy rules ~~and guidelines~~ adopted by the director prior to authorizing the construction and operation of a new public facility. EXISTING PUBLIC FACILITIES ARE SUBJECT TO THE RULES ADOPTED BY THE DIRECTOR PURSUANT TO THIS ARTICLE. The director shall grant temporary authorization to operate a new public facility if in ~~his~~ THE DIRECTOR'S opinion the public facility is needed immediately and could

1 not be properly planned in advance. The department shall approve or
2 disapprove plans within ninety days of receipt of complete plans
3 containing all required supporting documentation. If plans are rejected,
4 the department shall make available to the proposed agency a complete
5 written, detailed rationale for disapproval including recommendations for
6 correcting unacceptable parts of the plans.

7 B. Any change, modification or other deviation from approved plans
8 shall be approved by the director before implementation.

9 C. The director may suspend, amend, withdraw, condition or revoke
10 approval to operate a public facility if the director determines that the
11 public facility is in violation of any rule, ~~standard or guideline~~ adopted
12 by authority of this chapter. Action taken by the director under this
13 subsection shall conform with title 41, chapter 6.

14 D. Beginning January 1, 1993, the department shall review and
15 approve solid waste facility plans which satisfy FINANCIAL ASSURANCE
16 REQUIREMENTS PRESCRIBED IN SECTION 49-770, RESTRICTIVE COVENANTS FOR
17 CERTAIN SOLID WASTE FACILITIES AS PRESCRIBED IN SECTION 49-771, LOCATION
18 RESTRICTION REQUIREMENTS FOR CERTAIN SOLID WASTE DISPOSAL FACILITIES AS
19 PRESCRIBED IN SECTION 49-772 AND rules adopted by the director prior to
20 authorizing the construction and operation of a new solid waste facility.
21 EXISTING SOLID WASTE FACILITIES THAT ARE NOT OPEN TO THE PUBLIC ARE
22 SUBJECT TO THE RULES ADOPTED PURSUANT TO SECTION 49-761, SUBSECTION A,
23 PARAGRAPH 4. BY JULY 1, 1993, EXISTING SOLID WASTE FACILITIES THAT ARE
24 NOT OPEN TO THE PUBLIC SHALL SUBMIT A SOLID WASTE FACILITY PLAN TO THE
25 DEPARTMENT THAT SATISFIES RULES ADOPTED BY THE DIRECTOR. AN EXISTING
26 SOLID WASTE FACILITY THAT IS NOT OPEN TO THE PUBLIC SHALL OPERATE IN
27 COMPLIANCE WITH ITS FACILITY OPERATING PLAN. The director shall grant
28 temporary authorization to operate a new solid waste facility if in his
29 opinion the solid waste facility is needed immediately and could not be
30 properly planned in advance. AN OWNER OR OPERATOR OF MORE THAN ONE SOLID
31 WASTE FACILITY THAT CONDUCTS SIMILAR ACTIVITIES WITH SIMILAR WASTE STREAMS
32 MAY PREPARE AND IMPLEMENT A SINGLE PLAN THAT COVERS ALL OF ITS FACILITIES
33 IF IT HAS RECEIVED PRIOR APPROVAL FROM THE DIRECTOR AND HAS COMPLIED WITH
34 RULES REGARDING SINGLE PLANS THAT ARE ADOPTED BY THE DIRECTOR. The
35 director, by rule, may exempt from facility plan approval requirements
36 those solid waste facilities that are located in unincorporated areas and
37 are used only for disposal by a single family residence located on the
38 same property. The department shall approve or disapprove plans FOR NEW
39 SOLID WASTE FACILITIES within ninety days of receipt of complete plans
40 containing all required supporting documentation. THE DEPARTMENT SHALL
41 APPROVE OR DISAPPROVE PLANS FOR EXISTING SOLID WASTE FACILITIES WITHIN ONE
42 HUNDRED EIGHTY DAYS OF RECEIPT OF A COMPLETE PLAN THAT CONTAINS ALL OF THE
43 REQUIRED SUPPORTING DOCUMENTATION. THE DEPARTMENT IS EXEMPT FROM SECTION
44 49-767, SUBSECTIONS D THROUGH G FOR EXISTING SOLID WASTE FACILITIES THAT
45 ARE NOT OPEN TO THE PUBLIC. If plans are rejected, the department shall
46 make available to the owner or operator of the facility a complete
47 written, detailed rationale for disapproval including recommendations for
48 correcting unacceptable parts of the plans.

1 E. Any change, modification or other deviation from approved plans
2 shall be approved by the director before implementation.

3 F. The director may suspend, amend, withdraw, condition or revoke
4 approval to operate a solid waste facility if the director determines that
5 the facility is in violation of any rule, ~~standard or guideline~~ adopted by
6 authority of this chapter. Action taken by the director under this
7 subsection shall conform with title 41, chapter 6.

8 G. ~~Beginning January 1, 1993,~~ The following operations are exempt
9 from the provisions of this article unless the operations involve
10 materials that are required to have a special waste facility plan approval
11 pursuant to section 49-857 OR ARE SUBJECT TO THE WASTE TIRE DISPOSAL
12 REQUIREMENTS PRESCRIBED BY SECTION 44-1304:

13 ~~1. Reclamation of land through the introduction of landscaping~~
14 ~~rubble or inert material.~~

15 ~~2. 1. Material~~ MINED ROCK, LEACHED MATERIAL, TAILINGS AND SLAG
16 produced AND MAINTAINED ON SITE in connection with a mining or
17 metallurgical operation.

18 ~~3. 2. Agricultural on-site disposal as provided in section 49-766.~~

19 ~~4. Solid waste transfer, recycling or any other use in a facility~~
20 ~~with a capacity that is eighty cubic yards or less total capacity per site~~
21 ~~that does not involve permanent storage, treatment or disposal of solid~~
22 ~~waste.~~

23 ~~5. Application of solid waste to agricultural land as fertilizer or~~
24 ~~other beneficial soil amendment.~~

25 ~~6. 3. Receipt~~ MANAGEMENT of inert material.

26 ~~7. 4. Application of effluent as defined in section 45-101.~~

27 ~~8. 5. Application or release of return flows from irrigated~~
28 ~~agriculture.~~

29 ~~9. 6. Use, storage, treatment or disposal of by-products of~~
30 ~~regulated agricultural activities as defined in section 49-201 that are~~
31 ~~subject to best management practices under section 49-247 or by-products~~
32 ~~of livestock, range livestock and poultry, as defined in section 3-1201,~~
33 ~~or pesticide containers regulated pursuant to title 3, chapter 2,~~
34 ~~article 6.~~

35 7. ELEMOSYNARY TAX EXEMPT ORGANIZATIONS THAT HAVE A FACILITY WITH
36 A SOLID WASTE CAPACITY OF EIGHTY CUBIC YARDS OR LESS FOR EACH SITE AND
37 THAT STORE PAPER, GLASS, PLASTIC, ALUMINUM, STEEL OR OTHER RECYCLABLE
38 MATERIAL AS DEFINED IN SECTION 49-831.

39 H. Beginning January 1, 1993, the director shall collect from the
40 applicant on approval of the plan a reasonable fee based on the state's
41 total costs in processing the plan. The director may amend an existing
42 rule or adopt a new rule to establish criteria for those costs. That rule
43 making is exempt from title 41, chapter 6, except that the director shall
44 provide for reasonable notice and A hearing.

45 Sec. 4. Title 49, chapter 4, article 4, Arizona Revised Statutes,
46 is amended by adding sections 49-770, 49-771 and 49-772, to read:

1 49-770. Financial assurance requirements for solid waste facilities

2 A. BEGINNING APRIL 9, 1994, THE DIRECTOR SHALL APPROVE SOLID WASTE
3 FACILITY PLANS ONLY IF FINANCIAL RESPONSIBILITY HAS BEEN DEMONSTRATED FOR
4 THE COSTS OF CLOSURE, POSTCLOSURE CARE, IF NECESSARY, AND ANY CORRECTIVE
5 ACTION AS A RESULT OF KNOWN RELEASES FROM THE FACILITY. EXISTING SOLID
6 WASTE FACILITIES SHALL MODIFY EXISTING FACILITY PLANS TO DEMONSTRATE THE
7 FINANCIAL RESPONSIBILITY REQUIRED BY THIS SECTION. THE DIRECTOR SHALL
8 APPROVE THE MODIFIED PLAN BY APRIL 9, 1994. APPROVAL TO OPERATE IS
9 CONTINGENT ON CONTINUED DEMONSTRATION OF FINANCIAL ASSURANCE AS PRESCRIBED
10 IN THIS SECTION. THE DIRECTOR SHALL NOT GRANT TO OR CONTINUE APPROVAL FOR
11 APPLICANTS WHO ARE SUBJECT TO A BANKRUPTCY ACTION COMMENCED UNDER TITLE 11
12 UNITED STATES CODE, OR ANY PREDECESSOR STATUTE.

13 B. THE DIRECTOR SHALL NOT APPROVE A PLAN TO OPERATE A SOLID WASTE
14 FACILITY UNLESS THE APPLICANT HAS FILED WITH THE PLAN A SURETY BOND,
15 CERTIFICATE OF DEPOSIT, TRUST FUND WITH PAY-IN-PERIOD, LETTER OF CREDIT,
16 INSURANCE, CERTIFICATE OF SELF-INSURANCE, DEPOSIT WITH THE STATE TREASURER
17 OR OTHER FINANCIAL ASSURANCE MECHANISM ACCEPTABLE TO THE DEPARTMENT AS
18 EVIDENCE OF FINANCIAL RESPONSIBILITY FOR FACILITY CLOSURE, POSTCLOSURE
19 CARE, IF NECESSARY, AND CORRECTIVE ACTION FOR KNOWN RELEASES FROM THE
20 FACILITY.

21 C. THE FINANCIAL ASSURANCE INSTRUMENT SHALL BE MAINTAINED AND
22 MODIFIED AS NECESSARY THROUGHOUT THE OPERATION OF THE FACILITY IN THE
23 AMOUNT ESTIMATED PURSUANT TO SUBSECTION D OF THIS SECTION TO PROVIDE
24 ASSURANCE FOR SITE CLOSURE AND, IF NECESSARY, CONTINUED POSTCLOSURE
25 MONITORING AND MAINTENANCE FOR A THIRTY YEAR PERIOD AFTER CLOSURE, IN
26 ADDITION TO ASSURANCE FOR CORRECTIVE ACTION RESULTING FROM KNOWN RELEASES
27 FROM THE FACILITY. THE FACILITY OWNER OR APPLICANT SHALL INCLUDE FACILITY
28 SPECIFIC CLOSURE, POSTCLOSURE, IF NECESSARY, AND CORRECTIVE ACTIONS IN THE
29 APPROVED FACILITY PLAN AND SHALL UPDATE THEM PURSUANT TO RULES ADOPTED BY
30 THE DEPARTMENT.

31 D. ACCEPTABLE FINANCIAL ASSURANCE SHALL BE IN AN AMOUNT EQUAL TO
32 THE COST IN CURRENT DOLLARS OF HIRING A THIRD PARTY TO COMPLETE CLOSURE
33 AND POSTCLOSURE ACTIVITIES, IF NECESSARY, AT ANY TIME DURING THE ACTIVE
34 LIFE IN ACCORDANCE WITH THE FACILITY PLAN. THE COST ESTIMATES SHALL BE
35 UPDATED ANNUALLY FOR SOLID WASTE DISPOSAL FACILITIES AND EVERY THREE YEARS
36 FOR ALL OTHER SOLID WASTE FACILITIES TO ADJUST FOR INFLATION OR AS
37 NECESSARY TO REFLECT INCREASED MAXIMUM CLOSURE AND POSTCLOSURE COSTS
38 RESULTING FROM CHANGES TO THE FACILITY PLAN OR FACILITY CONDITIONS.

39 E. THE OWNER OR OPERATOR SHALL IDENTIFY THE DIRECTOR AS THE
40 BENEFICIARY OF THE FINANCIAL ASSURANCE INSTRUMENT. THE DIRECTOR MAY USE
41 THE FINANCIAL ASSURANCE INSTRUMENT REQUIRED UNDER THIS SECTION FOR THE
42 CLOSURE, POSTCLOSURE MONITORING AND MAINTENANCE, IF NECESSARY, AND
43 CORRECTIVE ACTION IF THE RESPONSIBLE PARTY FAILS TO COMPLY WITH CLOSURE,
44 POSTCLOSURE, IF NECESSARY, OR CORRECTIVE ACTION REQUIREMENTS OF THIS
45 ARTICLE OR THE RULES ADOPTED UNDER THIS ARTICLE. THE DIRECTOR MAY DRAW ON
46 THE FINANCIAL ASSURANCE INSTRUMENT FOR DEPOSIT TO THE STATE TREASURER IF
47 THE FINANCIAL ASSURANCE INSTRUMENT IS TO BE CANCELLED OR TERMINATED AND A
48 SUBSTITUTED FINANCIAL ASSURANCE INSTRUMENT ACCEPTABLE TO THE DEPARTMENT IS

1 NOT IN PLACE AT LEAST THIRTY DAYS BEFORE CANCELLATION OR TERMINATION OF
2 THE ORIGINAL FINANCIAL ASSURANCE INSTRUMENT.

3 F. THE DIRECTOR SHALL RETAIN THE FINANCIAL ASSURANCE INSTRUMENT
4 UNTIL THE PLAN SPECIFIED CLOSURE AND POSTCLOSURE REQUIREMENTS HAVE BEEN
5 COMPLETED OR UNTIL NEW FINANCIAL ASSURANCE HAS BEEN SUBMITTED BY A NEW
6 RESPONSIBLE PARTY AND APPROVED BY THE DIRECTOR. THE RESPONSIBLE PARTY:

7 1. SHALL RECEIVE ANY ACCRUED INTEREST ON FINANCIAL ASSURANCE
8 INSTRUMENTS RETAINED BY THE DEPARTMENT.

9 2. MAY REQUEST A REDUCTION IN FINANCIAL ASSURANCE REQUIREMENTS ON
10 COMPLETION OF CLOSURE OR PORTIONS OF POSTCLOSURE MONITORING AND
11 MAINTENANCE THAT ARE APPROVED BY THE DIRECTOR.

12 3. SHALL JUSTIFY ANY REDUCTION IN CLOSURE OR POSTCLOSURE COST
13 ESTIMATES IN THE FACILITY PLAN.

14 4. SHALL ASSURE THAT THE PERIOD OF COVERAGE OF THE FINANCIAL
15 ASSURANCE INSTRUMENT EXCEEDS BY A MINIMUM OF NINETY DAYS THE APPLICABLE
16 ONE OR THREE YEAR TIME PERIOD REQUIRED IN SUBSECTION D.

17 5. SHALL BE RELEASED FROM CLOSURE OR POSTCLOSURE FINANCIAL
18 RESPONSIBILITY ON CERTIFICATION BY A REGISTERED PROFESSIONAL ENGINEER THAT
19 THE SPECIFIC ACTIVITIES OF CLOSURE OR POSTCLOSURE HAVE BEEN COMPLETED IN
20 ACCORDANCE WITH THE APPROVED FACILITY PLAN AND PLACED IN THE OPERATING
21 RECORD OF THE FACILITY PLAN.

22 49-771. Restrictive covenants for certain solid waste
23 facilities

24 A. BEGINNING OCTOBER 9, 1993, THE DIRECTOR MAY GRANT APPROVAL FOR
25 CONSTRUCTION OF A SOLID WASTE FACILITY FOR DISPOSAL ONLY IF A RESTRICTIVE
26 COVENANT HAS BEEN PLACED ON THE DISPOSAL AREA OF THE FACILITY. AN
27 EXISTING SOLID WASTE FACILITY THAT DISPOSES OF SOLID WASTE SHALL COMPLY
28 WITH THIS SECTION BY OCTOBER 9, 1993. THE DIRECTOR AND ALL OF THE OWNERS
29 OF THE TRACT OF LAND ON WHICH THE SOLID WASTE FACILITY DISPOSAL AREA IS
30 LOCATED SHALL EXECUTE THE RESTRICTIVE COVENANT.

31 B. THE OWNER OR OPERATOR OF THE FACILITY SHALL RECORD THE
32 INSTRUMENT IMPOSING THE RESTRICTIVE COVENANT IN THE COUNTY RECORDER'S
33 OFFICE IN THE COUNTY IN WHICH THE SOLID WASTE FACILITY DISPOSAL AREA IS
34 LOCATED. THE OWNER OR OPERATOR SHALL PROVIDE A CERTIFIED COPY OF THE
35 RECORDED RESTRICTIVE COVENANT AFTER APPROVAL OF THE FACILITY PLAN BUT
36 BEFORE BEGINNING CONSTRUCTION OF THE FACILITY.

37 C. THE RESTRICTIVE COVENANT SHALL STATE THAT THE LAND DESCRIBED IN
38 THE COVENANT HAS BEEN OR WILL BE USED AS A SOLID WASTE FACILITY DISPOSAL
39 AREA AND THAT THE PROPERTY OWNERS, THEIR AGENTS OR EMPLOYEES OR ANY OF
40 THEIR HEIRS, SUCCESSORS, LESSEES OR ASSIGNEES SHALL NOT ENGAGE IN FILLING,
41 GRADING, EXCAVATING, DRILLING OR MINING THE PROPERTY DURING THE OPERATING
42 LIFE OF THE SOLID WASTE FACILITY DISPOSAL AREA WITHOUT APPROVAL FROM THE
43 DIRECTOR, OR AFTER CLOSURE UNLESS PROVIDED FOR IN THE APPROVED FACILITY
44 CLOSURE OR POSTCLOSURE PLAN. IN MAKING THIS DETERMINATION THE DIRECTOR
45 SHALL CONSIDER FACTORS SUCH AS THE ORIGINAL DESIGN, TYPE OF OPERATION,
46 MATERIAL DEPOSITED AND STAGE OF DECOMPOSITION OF THE DISPOSAL AREA.

47 D. THE DIRECTOR MAY WAIVE THE RESTRICTIVE COVENANT PRESCRIBED BY
48 THIS SECTION IF THE LAND IS FEDERAL LAND OR IF CONTRACTS THAT EXIST

1 BETWEEN THE LANDOWNER AND THE LICENSEE ON JANUARY 1, 1993 ARE NOT
2 RENEGOTIABLE.

3 49-772. Location restrictions for certain solid waste
4 facilities; definitions

5 A. BEGINNING JANUARY 1, 1993, OWNERS AND OPERATORS OF NEW AND
6 EXISTING SOLID WASTE FACILITIES THAT ENGAGE IN DISPOSAL AND THAT ARE
7 LOCATED WITHIN TEN THOUSAND FEET OF ANY AIRPORT RUNWAY END USED BY
8 TURBOJET AIRCRAFT OR WITHIN FIVE THOUSAND FEET OF ANY AIRPORT RUNWAY END
9 USED BY ONLY PISTON-TYPE AIRCRAFT SHALL DEMONSTRATE IN THE FACILITY PLAN
10 THAT THE FACILITY IS DESIGNED AND OPERATED SO THAT IT DOES NOT POSE A BIRD
11 HAZARD TO AIRCRAFT. OWNERS AND OPERATORS OF SOLID WASTE FACILITIES THAT
12 ENGAGE IN DISPOSAL AND THAT ARE LOCATED WITHIN A FIVE MILE RADIUS OF ANY
13 AIRPORT RUNWAY END USED BY TURBOJET OR PISTON-TYPE AIRCRAFT SHALL NOTIFY
14 THE AFFECTED AIRPORT AND THE FEDERAL AVIATION ADMINISTRATION.

15 B. IN ADDITION TO SITING REQUIREMENTS ESTABLISHED PURSUANT TO
16 SECTION 49-767, BEGINNING JANUARY 1, 1993, OWNERS AND OPERATORS OF NEW AND
17 EXISTING SOLID WASTE FACILITIES THAT ENGAGE IN DISPOSAL AND THAT ARE
18 LOCATED IN A ONE HUNDRED-YEAR FLOODPLAIN SHALL DEMONSTRATE IN THE FACILITY
19 PLAN THAT THE FACILITY WILL NOT RESTRICT THE FLOW OF THE ONE HUNDRED-YEAR
20 FLOOD, REDUCE THE TEMPORARY WATER STORAGE CAPACITY OF THE FLOODPLAIN OR
21 RESULT IN A WASHOUT OF SOLID WASTE SO AS TO POSE A HAZARD TO HUMAN HEALTH
22 AND THE ENVIRONMENT.

23 C. BEGINNING JANUARY 1, 1993, OWNERS AND OPERATORS OF NEW SOLID
24 WASTE FACILITIES THAT ENGAGE IN DISPOSAL SHALL NOT BE LOCATED IN WETLANDS,
25 UNLESS THE OWNER OR OPERATOR CAN DEMONSTRATE ALL OF THE FOLLOWING:

26 1. A PRACTICABLE ALTERNATIVE SITE THAT DOES NOT INVOLVE WETLANDS IS
27 NOT AVAILABLE.

28 2. THE CONSTRUCTION AND OPERATION OF THE FACILITY DOES NOT CAUSE,
29 CONTRIBUTE TO, JEOPARDIZE OR VIOLATE ANY APPLICABLE STATE WATER QUALITY
30 STANDARD, TOXIC EFFLUENT STANDARD OR PROHIBITION, ENDANGERED OR THREATENED
31 SPECIES OR CRITICAL HABITAT.

32 3. THE CONSTRUCTION AND OPERATION OF THE FACILITY DO NOT CAUSE OR
33 CONTRIBUTE TO SIGNIFICANT DEGRADATION OF WETLANDS.

34 4. TO THE EXTENT REQUIRED UNDER SECTION 404 OF THE CLEAN WATER ACT
35 OR APPLICABLE STATE WETLAND LAWS, STEPS HAVE BEEN TAKEN TO ATTEMPT TO
36 ACHIEVE NO NET LOSS OF WETLANDS AS DEFINED IN ACREAGE AND FUNCTION BY
37 FIRST AVOIDING IMPACTS TO WETLANDS TO THE MAXIMUM EXTENT PRACTICABLE
38 PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION AND OFFSETTING REMAINING
39 UNAVOIDABLE WETLAND IMPACTS THROUGH ALL APPROPRIATE AND PRACTICABLE
40 COMPENSATORY MITIGATION ACTIONS.

41 D. BEGINNING JANUARY 1, 1993, OWNERS AND OPERATORS OF NEW SOLID
42 WASTE FACILITIES ENGAGED IN DISPOSAL SHALL NOT BE LOCATED WITHIN TWO
43 HUNDRED FEET OF A FAULT THAT HAS HAD DISPLACEMENT IN HOLOCENE TIME UNLESS
44 THE OWNER OR OPERATOR CAN DEMONSTRATE IN THE FACILITY PLAN THAT AN
45 ALTERNATIVE SETBACK DISTANCE OF LESS THAN TWO HUNDRED FEET WILL PREVENT
46 DAMAGE TO THE STRUCTURAL INTEGRITY OF THE FACILITY AND WILL PROTECT PUBLIC
47 HEALTH AND THE ENVIRONMENT.

1 E. BEGINNING JANUARY 1, 1993, OWNERS AND OPERATORS OF NEW SOLID
2 WASTE FACILITIES THAT ENGAGE IN DISPOSAL SHALL NOT BE LOCATED IN SEISMIC
3 IMPACT ZONES UNLESS THE OWNER OR OPERATOR CAN DEMONSTRATE IN THE FACILITY
4 PLAN THAT ALL CONTAINMENT STRUCTURES, INCLUDING LINERS, LEACHATE
5 COLLECTION SYSTEMS AND SURFACE WATER CONTROL SYSTEMS, ARE DESIGNED TO
6 RESIST THE MAXIMUM HORIZONTAL ACCELERATION IN LITHIFIED EARTH MATERIAL FOR
7 THE SITE.

8 F. BEGINNING JANUARY 1, 1993, OWNERS AND OPERATORS OF NEW AND
9 EXISTING SOLID WASTE FACILITIES THAT ENGAGE IN DISPOSAL AND THAT ARE
10 LOCATED IN AN UNSTABLE AREA SHALL DEMONSTRATE IN THE FACILITY PLAN THAT
11 ENGINEERING MEASURES HAVE BEEN INCORPORATED INTO THE FACILITY DESIGN TO
12 ENSURE THAT THE INTEGRITY OF THE STRUCTURAL COMPONENTS OF THE FACILITY
13 WILL NOT BE DISRUPTED, INCLUDING AT A MINIMUM AN ANALYSIS OF THE
14 FOLLOWING:

15 1. ON-SITE OR LOCAL SOIL CONDITIONS THAT MAY RESULT IN SIGNIFICANT
16 DIFFERENTIAL SETTLING.

17 2. ON-SITE OR LOCAL GEOLOGIC OR GEOMORPHOLOGIC FEATURES.

18 3. ON-SITE OR LOCAL MAN-MADE SURFACE OR SUBSURFACE FEATURES OR
19 EVENTS.

20 G. FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE
21 REQUIRES:

22 1. "AIRPORT" MEANS A PUBLIC USE AIRPORT OPEN TO THE PUBLIC WITHOUT
23 PRIOR PERMISSION AND WITHOUT RESTRICTIONS WITHIN THE PHYSICAL CAPACITIES
24 OF AVAILABLE FACILITIES.

25 2. "AREAS SUSCEPTIBLE TO MASS MOVEMENT" MEANS THOSE AREAS THAT HAVE
26 AN ACTIVE OR SUBSTANTIAL POSSIBILITY OF MASS MOVEMENT AND WHERE THE
27 MOVEMENT OF EARTH MATERIAL AT, BENEATH OR ADJACENT TO THE SOLID WASTE
28 DISPOSAL FACILITY, BECAUSE OF NATURAL OR MAN-INDUCED EVENTS, RESULTS IN
29 THE DOWNSLOPE TRANSPORT OF SOIL AND ROCK MATERIAL BY MEANS OF
30 GRAVITATIONAL INFLUENCE. AREAS OF MASS MOVEMENT INCLUDE LANDSLIDES,
31 AVALANCHES, DEBRIS SLIDES AND FLOWS, SOIL FLUCTUATION, BLOCK SLIDING AND
32 ROCK FALL.

33 3. "BIRD HAZARD" MEANS AN INCREASE IN THE LIKELIHOOD OF BIRD AND
34 AIRCRAFT COLLISIONS THAT MAY CAUSE DAMAGE TO THE AIRCRAFT OR INJURIES TO
35 ITS OCCUPANTS.

36 4. "DISPLACEMENT" MEANS THE RELATIVE MOVEMENT OF ANY TWO SIDES OF A
37 FAULT MEASURED IN ANY DIRECTION.

38 5. "FAULT" MEANS A FRACTURE OR A ZONE OF FRACTURES IN ANY MATERIAL
39 ALONG WHICH STRATA ON ONE SIDE HAVE BEEN DISPLACED WITH RESPECT TO THAT ON
40 THE OTHER SIDE.

41 6. "FLOODPLAIN" MEANS THE LOWLAND AND RELATIVELY FLAT AREAS
42 ADJOINING INLAND AND COASTAL WATERS INCLUDING FLOOD-PRONE AREAS OF
43 OFF-SHORE ISLANDS THAT ARE INUNDATED BY THE ONE HUNDRED-YEAR FLOOD.

44 7. "HOLOCENE" MEANS THE MOST RECENT EPOCH OF THE QUATERNARY PERIOD,
45 EXTENDING FROM THE END OF THE PLEISTOCENE EPOCH TO THE PRESENT.

46 8. "KARST TERRANES" MEANS AREAS WHERE KARST TOPOGRAPHY WITH ITS
47 CHARACTERISTIC SURFACE AND SUBTERRANEAN FEATURES IS DEVELOPED AS A RESULT
48 OF DISSOLUTION OF LIMESTONE, DOLOMITE OR OTHER SOLUBLE ROCK.

1 CHARACTERISTIC PHYSIOGRAPHIC FEATURES PRESENT IN KARST TERRANES INCLUDE
2 SINKHOLES, SINKING STREAMS, CAVES, LARGE SPRINGS AND BLIND VALLEYS.

3 9. "LITHIFIED EARTH MATERIAL" MEANS ALL ROCK, INCLUDING ALL
4 NATURALLY OCCURRING AND NATURALLY FORMED AGGREGATES OR MASSES OF MINERALS
5 OR SMALL PARTICLES OF OLDER ROCK THAT FORMED BY CRYSTALLIZATION OF MAGMA
6 OR BY LOOSE SEDIMENTS. LITHIFIED EARTH MATERIAL DOES NOT INCLUDE MAN-MADE
7 MATERIALS SUCH AS FILL, CONCRETE AND ASPHALT OR UNCONSOLIDATED EARTH
8 MATERIALS, SOIL OR REGOLITH LYING AT OR NEAR THE EARTH SURFACE.

9 10. "MAXIMUM HORIZONTAL ACCELERATION IN LITHIFIED EARTH MATERIAL"
10 MEANS THE MAXIMUM EXPECTED HORIZONTAL ACCELERATION DEPICTED ON A SEISMIC
11 HAZARD MAP, WITH A NINETY PER CENT OR GREATER PROBABILITY THAT THE
12 ACCELERATION WILL NOT BE EXCEEDED IN TWO HUNDRED FIFTY YEARS, OR THE
13 MAXIMUM EXPECTED HORIZONTAL ACCELERATION BASED ON A SITE SPECIFIC SEISMIC
14 RISK ASSESSMENT.

15 11. "ONE HUNDRED-YEAR FLOOD" MEANS A FLOOD THAT HAS A ONE PER CENT
16 OR GREATER CHANCE OF RECURRING IN ANY GIVEN YEAR OR A FLOOD OF A MAGNITUDE
17 EQUALLED OR EXCEEDED ONCE IN ONE HUNDRED YEARS ON AN AVERAGE OVER A
18 SIGNIFICANTLY LONG PERIOD.

19 12. "POOR FOUNDATION CONDITIONS" MEANS THOSE AREAS WHERE FEATURES
20 EXIST THAT INDICATE THAT A NATURAL OR HUMAN-INDUCED EVENT MAY RESULT IN
21 INADEQUATE FOUNDATION SUPPORT FOR THE STRUCTURAL COMPONENTS OF A SOLID
22 WASTE DISPOSAL FACILITY.

23 13. "SEISMIC IMPACT ZONE" MEANS AN AREA WITH A TEN PER CENT OR
24 GREATER PROBABILITY THAT THE MAXIMUM HORIZONTAL ACCELERATION IN LITHIFIED
25 EARTH MATERIAL, EXPRESSED AS A PERCENTAGE OF THE EARTH'S GRAVITATIONAL
26 PULL, WILL EXCEED 0.10G IN TWO HUNDRED FIFTY YEARS.

27 14. "STRUCTURAL COMPONENTS" MEANS LINERS, LEACHATE COLLECTION
28 SYSTEMS, FINAL COVERS, RUN-ON OR RUN-OFF SYSTEMS, FLOOD CONTROL COMPONENTS
29 AND ANY OTHER COMPONENTS USED IN THE CONSTRUCTION AND OPERATION OF THE
30 SOLID WASTE DISPOSAL FACILITY THAT ARE NECESSARY FOR PROTECTION OF PUBLIC
31 HEALTH AND THE ENVIRONMENT.

32 15. "UNSTABLE AREA" MEANS A LOCATION THAT IS SUSCEPTIBLE TO NATURAL
33 OR HUMAN-INDUCED EVENTS OR FORCES CAPABLE OF IMPAIRING THE INTEGRITY OF
34 SOME OR ALL OF THE LANDFILL STRUCTURAL COMPONENTS RESPONSIBLE FOR
35 PREVENTING RELEASES FROM A LANDFILL. UNSTABLE AREAS MAY INCLUDE POOR
36 FOUNDATION CONDITIONS, AREAS SUSCEPTIBLE TO MASS MOVEMENTS AND KARST
37 TERRANES.

38 16. "WASHOUT" MEANS THE CARRYING AWAY OF SOLID WASTE BY WATERS OF A
39 BASE FLOOD.

40 17. "WETLANDS" MEANS THOSE AREAS THAT ARE INUNDATED OR SATURATED BY
41 SURFACE OR GROUNDWATER AT A FREQUENCY AND DURATION SUFFICIENT TO SUPPORT
42 AND THAT UNDER NORMAL CONDITIONS DO SUPPORT A PREVALENCE OF VEGETATION
43 TYPICALLY ADAPTED FOR LIFE IN SATURATED SOIL CONDITIONS. WETLANDS
44 GENERALLY INCLUDE SWAMPS, MARSHES, BOGS AND SIMILAR AREAS.

45 Sec. 5. Repeal

46 Laws 1991, chapter 315, section 37 is repealed.